

## Federal Maritime Commission

## Pt. 531, App. A

and § 530.3 or § 520.2 of this chapter, are not subject to the conditions of this exemption:

- (1) Bulk cargo;
- (2) Forest products;
- (3) Recycled metal scrap;
- (4) New assembled motor vehicles; and
- (5) Waste paper or paper waste.

(b) *Commission exemptions.* The following commodities and/or services are not subject to the conditions of this exemption:

(1) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

(2) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions approved by the Military Transportation Management Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed with the Commission as soon as it becomes available.

(c) *Inclusion of excepted or exempted matter.* (1) The Commission will not accept for filing NSAs which exclusively concern the commodities or services listed in paragraph (a) or (b) of this section.

(2) NSAs filed with the Commission may include the commodities or services listed in paragraph (a) or (b) of this section only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the commodity or service in question; or

(ii) The NSA itself sets forth a rate or charge which will be applied if the NSA is canceled, as defined in § 531.3(e) and § 531.8(d).

(d) *Waiver.* Upon filing an NSA pursuant to paragraph (c) of this section, the NSA shall be subject to the same requirements as those for NSAs generally.

[69 FR 75853, Dec. 20, 2004, as amended at 74 FR 50725, Oct. 1, 2009]

### § 531.11 Implementation.

*Generally.* Performance under an NSA or amendment thereto may not begin

before the day it is effective and filed with the Commission.

## Subpart E—Recordkeeping and Audit

### § 531.12 Recordkeeping and audit.

(a) *Records retention for five years.* Every NVOCC shall maintain original signed NSAs, amendments, and their associated records in an organized, readily accessible or retrievable manner for a period of five (5) years from the termination of each NSA. These records must be kept in a form that is readily available and usable to the Commission; electronically maintained records shall be no less accessible than if they were maintained in paper form.

(b) *Production for audit within 30 days of request.* Every NVOCC shall, upon written request of the FMC's Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Trade Analysis, submit copies of requested original NSAs or their associated records within thirty (30) days of the date of the request.

### § 531.13–531.98 [Reserved]

### § 531.99 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–0070. The valid control number for form FMC–78 is 3072–0070.

[69 FR 75853, Dec. 20, 2004, as amended at 70 FR 31370, June 1, 2005]

## APPENDIX A TO PART 531—INSTRUCTIONS FOR THE FILING OF NSAS

NSAs shall be filed in accordance with the instructions found on the Commission's home page, <http://www.fmc.gov>.

### A. REGISTRATION, LOG-ON I.D. AND PASSWORD

To register for filing, an NVOCC or authorized agent must submit the NSA Registration Form (Form FMC–78) to BTA. A separate NSA Registration Form is required for each individual that will file NSAs. BTA will

direct OIT to provide approved filers with a log-on identification number ("I.D.") and password. Filers who would like a third party (agent/publisher) to file their NSAs must so indicate on Form FMC-78. Authority for filing can be transferred by submitting an amended registration form requesting the assignment of a new log-on I.D. and password. The original log-on ID will be canceled when a replacement log-on I.D. is issued. Log-on I.D.s and passwords may not be shared with, loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any log-on I.D. that is shared with, loaned to or used by parties other than the registrant.

## B. FILING

After receiving a log-on I.D. and a password, a filer may log-on to the NSA filing area on the Commission's home page and file NSAs. The filing screen will request such information as: filer name, organization number ("Registered Persons Index" or "RPI" number); NSA and amendment number; effective date and file name. The filer will attach the entire NSA file and submit it into the system. When the NSA has been submitted for filing, the system will assign a filing date and an FMC control number, both of which will be included in the acknowledgment/confirmation message.

## Instructions for Form FMC-78

**Completed Form FMC-78 should be sent by mail or facsimile to:**

**Federal Maritime Commission  
Bureau of Trade Analysis  
800 N. Capitol Street, NW  
Washington, DC 20573-0001  
Fax (202) 523-5867**

**Line 1. Organization Number.** This is the same as the Regulated Persons Index ("RPI") Number.

**Line 2. Registrant.** Provide the full name of the firm or individual registering for the automated NSA filing system and any trade names. The Registrant's name should match the corporate charter or business license, etc. The Registrant's name cannot be changed without submission of an amended registration form.

**Line 3. FMC License Number.** Provide name of Registrant as licensed by the Commission and date of the effectiveness of that license. If Registrant is a bonded but unlicensed foreign-based NVOCC operating pursuant to Commission's regulations at 46 C.F.R. § 515.3, indicate the name and address of the agent for service of process as required by 46 C.F.R. § 515.24. The name and address of the agent for service of process must be the same as that appearing in the NVOCC's tariff, as provided by 46 C.F.R. § 520.11 (b).

**Line 4. Registration.** Indicate whether this is the initial (first time) registration or an amendment to an existing NSA registration.

**Line 5. Address of Headquarters Office.** The complete street address of the Registrant's principal place of business should be shown in addition to a post office box (if any). Post office box alone is insufficient. Provide the Registrant's Federal Taxpayer Identification Number, if any.

**Line 6. Mailing Address (if different).** Provide the mailing address only if it differs from the headquarters address listed in Line 5. Show the street address as well as any post office box. This is the address to which the Registrant's log-on I.D. and password will be mailed via U.S. mail. Also, if the log-on I.D. and password is to be mailed to a third party, indicate here.

**Line 7. Persons to be granted registration.** Provide the full name of the individual for whom the log-on I.D. and password is requested. If you wish to transfer a log-on I.D. from an existing registration to a new individual, indicate the name of the new registrant and the log-on I.D. to be assigned.

**Line 8. Registration by Third Party.** Indicate, by checking the applicable box, whether the person to be granted registration in Line 7 is a third party (publisher, agent, etc.) of the registrant named in Line 1. The registration must be accompanied by an indication that the NVOCC has authorized the third party to file NVOCC service arrangements and related documents on its behalf.

**Line 9. Signature of Authorized Official.** Indicate the date the registration was signed and title of authorized official.

## Federal Maritime Commission

Pt. 531, App. A

### **Paperwork Reduction Act Notice.**

The collection of this information is authorized generally by section 16 of the Shipping Act of 1984, 46 U.S.C. app. § 1715.

This is an optional form. Submission is completely voluntary. Failure to submit this form will in no way impact the Federal Maritime Commission's assessment of your firm's financial responsibility; however, you will not be able to use the exemption set forth in the Commission's rules at 46 C.F.R. part 531.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. The valid control number for this information collection is 3072-0070. Copies of this form will be maintained until the filer indicates s/he will no longer file NSAs into the electronic filing system.

The time needed to complete and file this form will vary depending on individual circumstances. The total estimated average time to complete this form is: Recordkeeping, 20 minutes; Learning about the form, 20 minutes; Preparing and sending the form to the FMC, 20 minutes.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, or e-mail: [secretary@fmc.gov](mailto:secretary@fmc.gov).

EXHIBIT 1 – NVOCC SERVICE ARRANGEMENT REGISTRATION [FORM FMC-78]

OMB No. 3072-0070 (exp. date: 3/31/2008)

**FORM FMC-78**

PLEASE TYPE OR PRINT

**NVOCC SERVICE ARRANGEMENT REGISTRATION**

(SEE ATTACHED INSTRUCTIONS)

**1. Organization No.****2. Registrant**

Full Legal Name of firm (or individual, if not a firm)

(Doing Business As or Trade Name)

**3. a. NVOCC OTI License No.** \_\_\_\_\_ **Effective date:** \_\_\_\_\_  
MM/DD/YYYY**OR b. If foreign-based unlicensed NVOCC, provide the following information for agent for service of process:****Name:** \_\_\_\_\_**Address:** \_\_\_\_\_**4. This Registration is:** ☐ Initial ☐ Amendment (Specify change)**5. Headquarters Address**

(Number and Street) \_\_\_\_\_

( )

Telephone \_\_\_\_\_

(Number and Street) \_\_\_\_\_

( )

Fax \_\_\_\_\_

(City/State/Zip/Country) \_\_\_\_\_

(Federal TIN Number, if any) \_\_\_\_\_

E-Mail (optional) \_\_\_\_\_

**6. Mailing Address (if different)**

c/o name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

( )

Fax \_\_\_\_\_

( )

Email (optional) \_\_\_\_\_

**7. Person(s) to be granted registration. Please list individual(s) for whom a log-on identifier is requested. If this is a transfer of log-on, please list the existing name and existing log-on ID:** Name: \_\_\_\_\_ Existing Log-on: \_\_\_\_\_**8. Is the person listed in question 7 a third party? (check one)** ☐ Yes ☐ No. If yes, a letter of authority must be submitted with this form.**9.**

Signature of Authorized Official \_\_\_\_\_

Print or type name of Authorized Official \_\_\_\_\_

date (MM/DD/YYYY) \_\_\_\_\_

Title of Authorized Official \_\_\_\_\_

**FMC USE ONLY**Logon \_\_\_\_\_ ID \_\_\_\_\_ Directory \_\_\_\_\_ DateAsg \_\_\_\_/\_\_\_\_/\_\_\_\_ AsgBy \_\_\_\_\_  
11/04 (rev'd 12/04)(rev'd 3/05)

[69 FR 75853, Dec. 20, 2004, as amended at 70 FR 31370, June 1, 2005; 74 FR 50725, Oct. 1, 2009]

## Federal Maritime Commission

## § 532.3

### PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

#### Subpart A—General Provisions

- 532.1 Purpose.
- 532.2 Scope and applicability.
- 532.3 Definitions.

#### Subpart B—Procedures Related to NVOCC Negotiated Rate Arrangements

- 532.4 Duties of the NVOCC rules tariff.
- 532.5 Requirements for NVOCC negotiated rate arrangements.
- 532.6 Notices.

#### Subpart C—Recordkeeping Requirements

- 532.7 Recordkeeping and audit.
- 532.91 OMB control number assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 46 U.S.C. 40103.

SOURCE: 76 FR 11360, Mar. 2, 2011, unless otherwise noted.

#### Subpart A—General Provisions

##### § 532.1 Purpose.

The purpose of this Part, pursuant to the Commission's statutory authority, is to exempt licensed and bonded non-vessel-operating common carriers (NVOCCs) from the tariff rate publication and adherence requirements of the Shipping Act of 1984, as enumerated herein.

##### § 532.2 Scope and applicability.

This Part exempts NVOCCs duly licensed pursuant to 46 CFR 515.3; holding adequate proof of financial responsibility pursuant to 46 CFR 515.21; and meeting the conditions of 46 CFR 532.4 through 532.7; from the following requirements and prohibitions of the Shipping Act and the Commission's regulations:

- (a) The requirement in 46 U.S.C. 40501(a)–(c) that the NVOCC include its rates in a tariff open to public inspection in an automated tariff system;
- (b) 46 U.S.C. 40501(d);
- (c) 46 U.S.C. 40501(e)
- (d) 46 U.S.C. 40503;
- (e) the prohibition in 46 U.S.C. 41104(2)(A);
- (f) the Commission's corresponding regulation at 46 CFR 520.3(a) that the NVOCC include its rates in a tariff

open for public inspection in an automated tariff system; and

(g) the Commission's corresponding regulations at 46 CFR 520.4(a)(4), 520.4(f), 520.6(e), 520.7(c), (d), 520.8(a), 520.12, and 520.14. Any NVOCC failing to maintain its bond or license as set forth above, or who has had its tariff suspended by the Commission, shall not be eligible to invoke this exemption.

##### § 532.3 Definitions.

When used in this part,

(a) “NVOCC Negotiated Rate Arrangement” or “NRA” means a written and binding arrangement between an NRA shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after receipt of the cargo by the carrier or its agent (or the originating carrier in the case of through transportation).

(b) “Rate” means a price stated for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on and after a stated date or within a defined time frame.

(c) “Rules tariff” means a tariff or the portion of a tariff, as defined by 46 CFR 520.2, containing the terms and conditions governing the charges, classifications, rules, regulations and practices of an NVOCC, but does not include a rate.

(d) “NRA shipper” means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act (46 U.S.C. 40102(16)), that accepts responsibility for payment of all applicable charges under the NRA.

(e) “Affiliate” means two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with or otherwise related to each other through common stock ownership or common directors or officers.